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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5681
DATE COMPLAINT FILED: Sept. 22, 2005
Oct. 5, 2005
DATE OF NOTIFICATION: Sept. 29, 2005
Oct. 14, 2005
LAST RESPONSE RECEIVED: Nov. 2, 2005
DATE ACTIVATED: May 24, 2006
EXPIRATION OF SOL: Aug. 1, 2010

COMPLAINANT:

Michael D. Pugh

RESPONDENTS:

High Point Regional Association of Realtors
National Association of Realtors Political Action
Committee and Bruce Wolf, in his official
capacity as treasurer

**RELEVANT STATUTE AND
REGULATIONS:**

2 U.S.C. § 441b
11 C.F.R. § 114.5

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant, a member of the High Point Regional Association of Realtors ("HPRAR"), alleged that HPRAR used "intimidation, coercion and retaliation" to force members to make contributions to the National Association of Realtors Political Action Committee. Specifically, Complainant stated that HPRAR publicized the names of its members who did not make contributions in the association's monthly newsletter and at association meetings. After evaluating all the available information, we recommend that the Commission find reason to believe that HPRAR violated 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a) by improperly soliciting contributions to a separate segregated fund

We also recommend that the Commission find no reason to believe that the separate segregated fund, the National Association of Realtors Political Action Committee, violated the Federal Election Campaign Act of 1971, as amended ("the Act").

II. FACTUAL AND LEGAL ANALYSIS

A. Background

HPRAR is a local association of realtors affiliated with the National Association of Realtors ("NAR"). As a local affiliate of NAR, HPRAR regularly solicits its members for contributions to NAR's separate segregated fund, the National Association of Realtors Political Action Committee ("RPAC").¹ According to the complaint and amended complaint, on multiple occasions in 2005, HPRAR publicized the names of individual members who had not contributed to RPAC, in an effort to solicit contributions.

Specifically, the complaint stated that in August 2005, HPRAR listed the name of each individual realtor member who had "not yet" contributed to RPAC on two pages of its eight-page monthly newsletter. See Attachment 1 at 6-7. The names of the non-contributing individuals were listed under the name of their company, and the percentage of contributing members from each company appeared next to the company's name. Companies that had a 100% contribution rate from its individual members were listed at the very top of the two-page list under the heading "2005 100% RPAC Companies." No individual names of members who had already made contributions to RPAC were listed anywhere in the two-page spread. At the bottom of the second page there is a logo of RPAC with the question: "Have you made your contribution?" *Id.* at 7 (emphasis in original).

¹ See 2 U.S.C. § 114.8(g); AO 1995-17 (NAR and its affiliated state and local Realtor associations may solicit contributions to RPAC from members of such state and local "Member Boards" (Realtor associations)).

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1 The newsletter also contained an article summarizing new state legislation "that makes
2 significant improvements to the State's real estate licensing law." *House Approves Broker-in-
3 Charge and Broker Only Licensure Legislation*, NEWS REAL, Attachment 1 at 1. The end of the
4 article stated: "These bills are representative of your RPAC dollars at work to improve our
5 industry standards and working environment as well as to further protect our customers and
6 clients, the real estate consumer. Have you given your RPAC fair share? A special RPAC
7 thanks to a Sterling R sustaining supporter, which means that she believes in
8 RPAC for sustaining her real estate business by very generously supporting it monetarily through
9 RPAC." *Id.* at 3 (emphasis in original).

10 According to complainant, HPRAR also regularly displayed the names of non-
11 contributing members on an overhead projection screen at the association's monthly meetings
12 and at the association's 2005 Annual Meeting, held on September 21, 2005, where checks were
13 being presented to local candidates. In response to the amended complaint, HPRAR confirmed
14 that the "exact same information" that was contained in the newsletter was provided on an
15 overhead projection at a monthly meeting and at the 2005 Annual Election Meeting.²

16 Respondents did not dispute the material facts, and acknowledged that the Act prohibits
17 the solicitation of contributions by coercive methods. However, they argued that the disclosure
18 of names of non-contributing members in a newsletter distributed only to members and at
19 members-only meetings is not coercive and, therefore, does not violate the Act. Respondents
20 asserted that, because members "have no right to or expectation of anonymity ... publication of
21 the identity of non-contributing solicitable [sic] persons is not a violation of the Act or

² The amended complaint stated that it was a "common practice" to display the names at monthly meetings, but the complaint did not indicate how long the practice has been in effect. Respondents' acknowledgement stated that the information was displayed at "the monthly meeting" inferring that it was only done on one occasion

1 Regulations." In support of their argument, Respondents relied on 11 C.F.R. §§ 114.7(e) and (f),
2 which provide that there is no limitation on the number of times a membership organization may
3 solicit its members or on the methods the organization may use to solicit voluntary contributions
4 from its members.

5 B. Analysis

6 Although HPRAR may solicit its members for contributions to RPAC, such solicitations
7 must not be coercive. In order to ensure that contributions solicited for a separate segregated
8 fund are voluntary, the Act makes it unlawful for a separate segregated fund to make a
9 contribution or expenditure by utilizing money or anything of value secured by physical force,
10 job discrimination, financial reprisals, or the threat of them. 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R.
11 § 114.5(a)(1). In addition, it is unlawful for a solicitation for contributions, whether written or
12 oral, to fail to inform the employee or member being solicited at the time of the solicitation of
13 the political purposes of the separate segregated fund and of his or her right to refuse to so
14 contribute without any reprisal.³ 2 U.S.C. § 441b(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(5). *See*
15 *also* AO 1998-19 (finding that a solicitation that did not include a statement that the member has
16 a right to refuse to contribute without any reprisal to be deficient even where the solicitation

³ The Commission has previously found that the lack of proper notice in a solicitation compromises the voluntariness of the contributions received in response and can be coercive. In MUR 5337 (First Consumers National Bank), the bank and the bank's CEO were alleged to have facilitated the making of contributions from employees to a state PAC by making coercive solicitations for contributions to the PAC. In that matter, the bank CEO made several written solicitations to the bank managers that included a guideline amount for contributions. One solicitation also stated that a contribution was voluntary, but implied that bank bonuses depended on whether contributions were made, and listed the names of those who had yet to contribute. None of the solicitations included a statement of a specific right to refuse to contribute without reprisal or of the political purposes of the fund, did not explain that the guideline was only a suggested amount and the donor was free to contribute more or less, or that the bank would not favor or disadvantage anyone by reason of the amount of their contribution. The Conciliation Agreement in that matter sets forth that solicitations that do not meet the proper notice requirements of 11 C.F.R. § 114.5 can be coercive. *See* MUR 5337, Conciliation Agreement at ¶ 7.

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1 already states that contributions are voluntary) and AO 1988-3 (requiring separate segregated
2 funds to adhere to 11 C.F.R. § 114.5 to ensure contributions are voluntary).

3 In this matter, the publication of the names of non-contributing members likely was
4 intended to put pressure on members to donate to RPAC, although this activity, by itself, does
5 not appear to constitute a violation of 2 U.S.C. § 441b(b)(3). However, the solicitations in this
6 matter also lacked proper notice of the political purposes of RPAC and the member's right to
7 refuse to contribute without reprisal, as required by 2 U.S.C. § 441b(b)(3) and 11 C.F.R.
8 § 114.5(a). Specifically, the newsletter solicited contributions to RPAC by listing the names of
9 non-contributing members and asking, "Have you made your contribution?" Attachment 1 at 7
10 (emphasis in original). In addition, in a separate section of the newsletter, HPRAR made another
11 solicitation for contributions to RPAC when it described newly passed legislation that it viewed
12 as advantageous to the real estate industry, explained that RPAC dollars make such legislation
13 possible, and asked, "Have you given your RPAC fair share?" *Id.* at 3. These solicitations were
14 directed to HPRAR members, but neither portion contained a notice informing the association
15 members of the political purposes of the RPAC or that the member has a right to refuse without
16 reprisal, as required by the Act.⁴ Based on the foregoing, we recommend that the Commission
17 find reason to believe that the High Point Regional Association of Realtors violated the Act by
18 improperly soliciting contributions to a separate segregated fund, in violation of 2 U.S.C.
19 § 441b(b)(3) and 11 C.F.R. § 114.5(a).

⁴ The statement preceding the second solicitation, "These bills are representative of your RPAC dollars at work to improve our industry standards and working environment as well as to further protect our customers and clients, the real estate consumer," could be construed as a statement of the political purpose of RPAC, as the Act requires. Attachment 1 at 3. However, even if it were so construed, the solicitation still lacked the statement that contributions are voluntary, and therefore, still violates the Act.

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1 The complaint did not specifically allege, nor did any of the available information
2 suggest, that RPAC was involved in the solicitation. Therefore, we recommend that the
3 Commission find no reason to believe that the National Association of Realtors Political Action
4 Committee and Bruce Wolf, in his official capacity as treasurer, violated 2 U.S.C. § 441b(b)(3)
5 and 11 C.F.R. § 114.5(a) and close the file as to these respondents.

6 **III. CONCILIATION**

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IV. RECOMMENDATIONS

1. Find reason to believe that the High Point Regional Association of Realtors violated 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a).
2. Find no reason to believe that the National Association of Realtors Political Action Committee and Bruce Wolf, in his official capacity as treasurer, violated 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a) and close the file as to these respondents.
3. Approve the attached Factual and Legal Analysis.
- 4.
- 5.
6. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

10-3-06
Date

BY: Kathleen M. Guith
Kathleen M. Guith
Acting Assistant General Counsel

Dominique Dillenseger
Dominique Dillenseger
Attorney

Attachments:

1. "News Real"; RPAC August 2005 Monthly Newsletter
2. Factual and Legal Analysis